



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

1200 Sixth Avenue, Suite 155
Seattle, WA 98101-3123

OFFICE OF WATER AND
WATERSHEDS

NOV 16 2018

Ms. Heather Bartlett
Water Quality Program Manager
Washington Department of Ecology
P. O. Box 47600
Olympia, Washington 98504-7600

Dear Ms. Bartlett:

By this letter, the U.S. Environmental Protection Agency (EPA) is taking action to comply with the U.S. District Court for the Western District of Washington's October 17, 2018, Order regarding Motions for Summary Judgment in *Columbia Riverkeeper, et al. v. Pruitt, et al.*, No. C17-289RSM. In that order, the district court directed the EPA to approve or disapprove within 30 days a "constructive submission" of "no" total maximum daily loads (TMDLs) by the Washington Department of Ecology (Ecology) for 49 segments of the Mainstem of the Columbia River and Lower Snake River identified in the Enclosure as impaired for temperature on Washington's Clean Water Act section 303(d) List.

The EPA respectfully disagrees with and may appeal the district court's order. The EPA's position, as reflected in its briefing to date before the district court, is that there has been no constructive submission by Ecology for the temperature impairments on these listed segments. As such, EPA would not have taken this action if it had not been ordered to do so by the district court. The EPA expressly reserves the right to withdraw or revise this action in whole or in part if it obtains a judicial decision on appeal that relieves the EPA of the obligations contained in the district court's October 17, 2018, order.

As of the date of this letter, the EPA and the U.S. Department of Justice are evaluating whether to appeal the district court's order. The EPA had sought and was denied a 30-day extension to consider an appeal, notwithstanding the 60 days otherwise applicable under Rule 4(b) of the Federal Rules of Appellate Procedure for decision-making regarding appeals when a federal agency is a party. Accordingly, despite its disagreement with the court's order, the EPA is complying with that order by taking this action based on the administrative record as it existed at the time of the district court's order.

The EPA disapproves Ecology's "constructive submission" of "no" TMDL for temperature because the EPA has determined that it does not meet the statutory requirements in Clean Water Act section 303(d)(1)(C) and (d)(2), and the regulatory requirements for the EPA approval set forth in 40 C.F.R. section 130.7(c).

If you have any questions regarding this matter, please contact me at (206) 553-1855, or have your staff contact Jennifer Byrne at (503) 326-5872, or Mary Lou Soscia at (503) 326-5873.

Sincerely,

A handwritten signature in cursive script, appearing to read "Daniel D. Opalski", with a small "for" written below it.

Daniel D. Opalski
Director

Enclosure

Enclosure

Washington 303(d) Temperature Impairments on the Columbia and Lower Snake Rivers

Waterbody	Assessment unit	River mile
Columbia River	170800030900_01_02	38.6-47.5
Columbia River	170800030900_01_04	53.6 - 57.9
Columbia River	170800030900_01_05	57.9-68.1
Columbia River	170800030900_01_06	68.1 - 73.1
Columbia River	170800030900_01_07	73.1 - 76.1
Columbia River	170800030200_01_01	86.6 - 101.4
Columbia River	170800030200_01_02	101.4 - 120.5
Columbia River	170800010804_01_01	120.5 - 131.5
Columbia River	170800010802_01_01	136.8 - 142.4
Columbia River	170701051204_01_01	146.1 - 154.7
Columbia River	170701051106_01_01	154.7 - 168.9
Columbia River	170701051105_01_01	168.9 - 180.4
Columbia River	170701050406_01_01	180.4 - 191.8
Columbia River	170701050401_01_01	191.8 - 202.7
Columbia River	170701050103_01_01	202.7 215.6
Columbia River	170701011408_01_01	215.6 227.7
Columbia River	170701010601_01_01	286.5 - 292.0
Columbia River	170701010207_01_01	292.0 - 294.8
Columbia River	170701010201_01_01	305.2 - 309.3
Columbia River	170701010103_01_01	314.4 - 317.4
Columbia River	170200160604_01_01	324.5 of 338.1
Columbia River	170200160106_01_01	387.9 - 397.2
Columbia River	170200160105_01_01	397.2 - 404.4
Columbia River	170200100507_01_01	410.7 of 415.8
Columbia River	170200100506_01_01	415.8 - 421.7
Columbia River	170200100401_01_01	450.1 - 453.4

Waterbody	Assessment unit	River mile
Columbia River	170200100313_01_01	453.4 - 464.1
Columbia River	170200100308_01_01	464.1 - 468.4
Columbia River	170200100307_01_01	468.4 - 473.7
Columbia River	170200100306_01_01	473.7 - 483.7
Columbia River	170200050507_01_01	503.4 - 515.6
Columbia River	170200050505_01_01	515.6 - 523.8
Columbia River	170200050405_01_01	533.6 - 545.2
Columbia River	170200050404_01_01	545.2 - 554.8
Columbia River	170200050203_01_01	589.3 - 596.7
Columbia River (Roosevelt Lake)	48117J7B8	
Columbia River (Roosevelt Lake)	48117J7C7	
Columbia River (Roosevelt Lake)	47118J6D8	
Columbia River (Roosevelt Lake)	48118F1G1	
Columbia River (Roosevelt Lake)	48118F1J2	
Snake River	170601100404_01_01	0.3 - 9.800
Snake River	170601100403_01_01	9.8 - 21.10
Snake River	170601100106_01_01	29.8 - 41.60
Snake River	170601100103_01_01	41.6 - 51.80
Snake River	170601070807_01_01	67.4 - 70.30
Snake River	170601070804_01_01	77.9 of 91.80
Snake River	170601070802_01_01	91.8 - 107.3
Snake River	170601030307_01_01	139.3 - 150.3
Snake River	170601030303_01_01	157.6 - 168.8

Applicable State of Washington Water Quality Standards for Temperature

The stream segments listed in the table above were identified by Ecology as not attaining Washington water quality standards, set forth in Chapter 173-201A of the Washington Administrative Code, for aquatic life use categories that are described using key species (e.g., salmonid or char versus warm-water species) and life-stage conditions (e.g., spawning versus rearing) [WAC 173-201A-200 and 173-201A-602].